U.S. Department of Justice

United States Attorney
Eastern District of New York

BDM:TRP
F. #2012R00103

271 Cadman Plaza East
Brooklyn, New York 11201

June 8, 2017

By ECF

The Honorable Ramon E. Reyes, Jr.
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Vitaly Korchevsky, et al.,
Criminal Docket No. 15-381 (S-1) (RJD) (RER)

Dear Judge Reyes:

The government respectfully writes regarding the Court's Order entered on May 19, 2017 granting petitioner Svetlana Korchvesky's motion filed the same day requesting an ancillary hearing in the above-referenced criminal forfeiture proceeding. See Petition, Dkt. #166. For the reasons set forth below, the government respectfully requests that the hearing presently scheduled for June 19, 2017 be adjourned until at least thirty days after the conclusion of the criminal trial scheduled to commence on October 30, 2017 against defendant Vitaly Korchevsky, who previously filed a competing claim to the same property at issue. See Petition, Dkt. #144. In the alternative, the government respectfully requests that the parties be directed to confer and submit to the Court a proposed briefing schedule for a motion by the government seeking dismissal of Svetlana Korchevsky's petition. The government has conferred with counsel for Svetlana Korchevsky, who has not provided a position with respect to the instant motion.

I. Procedural Background

A. The Indictment

On or about August 5, 2015, a grand jury sitting in the Eastern District of New York returned an indictment charging Vitaly Korchevsky, Vladislav Khalupsky, Leonid Momotok and Alexander Garkusha with (i) conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349, (ii) conspiracy to commit securities fraud, in violation of 18 U.S.C. § 371, (iii) securities fraud, in violation of 15 U.S.C. §§ 78j(b) and 78(ff), and (iv) conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h). The indictment, as well as a superseding indictment filed on September 13, 2016, included a criminal forfeiture allegation providing notice of the government's intent to seek forfeiture of all proceeds of the charged offenses, including ten parcels of real property specifically identified in the indictment.

On or about August 7, 2015, Your Honor issued seizure warrants for funds held in three financial accounts controlled by Vitaly Korchevsky (the "Subject Funds"), finding that probable cause existed to believe that such funds were subject to forfeiture pursuant to (i) Title 18, United States Code, Section 981(a)(1)(C), as property constituting or derived from proceeds traceable to a conspiracy to commit wire fraud in violation of Title 18, United States Code, Section 1349, and (ii) Title 18, United States Code, Sections 981(a)(1)(A) and 982(a)(1), as property involved in money laundering activity or attempted money laundering activity in violation of Title 18, United States Code, Section 1956.

On August 25, 2015, the government filed a Bill of Particulars (Dkt. #21) providing notice of its intent to seek forfeiture of one additional parcel of real property, located at 1709 Slitting Mill Road, Glen Mills, Pennsylvania. In addition, on December 30, 2015, the government filed a Bill of Particulars (Dkt. #62) providing notice of the government's intent to seek forfeiture of the Subject Funds.

B. Preliminary Orders of Forfeiture

On or about December 21, 2015, defendant Alexander Garkusha pled guilty to Count One of the indictment charging him with conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349. Following Garkusha's guilty plea, on or about September 12, 2016, the Court entered a Preliminary Order of Forfeiture (Dkt. #104), which directed forfeiture of the following parcels of real property:

1) The real property and premises located at 1591 Meadow Lane, Glen Mills, Pennsylvania 19342 (the "Meadow Lane Property");

2) The real property and premises located at 3 Skyline Drive, Glenn Mills, Pennsylvania 19342;

3) The real property and premises located at 7 Skyline Drive, Glenn Mills, Pennsylvania 19342;

4) The real property and premises located at 10 Skyline Drive, Glenn Mills, Pennsylvania 19342;

5) The real property and premises located at 9 Blackhorse Lane, Media, Pennsylvania 19063 (the "Blackhorse Lane Property");

6) The real property and premises located at 316 Willowbrook Road, Upper Chichester, Pennsylvania 19061 (the "Willowbrook Road Property");

7) The real property and premises located at 674 Cheyney Road, Cheyney, Pennsylvania 19319;

8) The real property and premises located at 1290 Samuel Road, West Chester, Pennsylvania 19380 (the "Samuel Road Property");

9) The real property and premises located at 1737 Graham Road, Macon, Georgia 31211;

10) The real property and premises located at 122-134 Lancaster Avenue, Malvern, Pennsylvania 19355 (the "Lancaster Avenue Property");

11) The real property and premises located at 1801 Kings Highway, Coatesville, Pennsylvania 19355; and

12) The real property and premises located at 1709 Slitting Mill Road, Glen Mills, Pennsylvania (the "Slitting Mill Road Property").

On or about August 2, 2016, defendant Leonid Momotok pled guilty to Count One of the above-captioned indictment charging him with conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349. Following Momotok's plea, on or about October 3, 2016, the Court entered a Preliminary Order of Forfeiture (Dkt. # 113), which directed forfeiture of the real property listed above with the exception of property number "4)", as well as the following Subject Funds:

1) $4,651,166.04, more or less, seized on or about August 11, 2015 from Pershing, LLC account number XXXXXX191 held in the name of NTS Capital Fund, and all proceeds traceable thereto;

2) $754,293.00, more or less, seized on or about August 11, 2015 from E*trade account number XXXXX623 held in the names of Vitaly Korchevsky and Svetlana Korchevsky, and all proceeds traceable thereto; and

3) $34,320.36, more or less, seized on or about August 11, 2015 from PNC bank account number XXXXXXX988 held in the names of Vitaly Korchevsky and Svetlana Korchevsky, and all proceeds traceable thereto.

C. Third-Party Petitions

On February 17, 2017, defendant Vitaly Korchevsky filed a petition for an ancillary hearing pursuant to Title 21, United States Code, Section 853(n). See Petition, Dkt. #144. In his petition, Vitaly Korchevsky asserted a claim to the Subject Funds and the parcels of real property set forth in the Preliminary Orders of Forfeiture entered against codefendants Momotok and Garkusha (collectively, the "Subject Property"). The government expects that Vitaly Korchevsky's third party petition will remain in abeyance until the conclusion of his criminal trial, with the parties to file a status letter with the Court no later than 30 days following the conclusion of the trial.

On May 19, 2017, Vitaly Korchevsky's wife, Svetlana Korchevsky, filed a petition requesting an ancillary hearing and asserting an interest in certain of the same property claimed by Vitaly Korchevsky in his petition. See Petition, Dkt #166. Specifically, Svetlana Korchevsky asserted an interest in the Subject Funds, the Meadow Lane Property, the Blackhorse Lane Property, the Willowbrook Road Property, the Samuel Road Property, the Lancaster Avenue Property, and the Slitting Mill Road Property.

II. Statutory Framework

The post-trial ancillary proceeding is where third parties have an opportunity to establish their legal right, title or interest in criminally forfeited property. See 21 U.S.C. § 853(n); Fed R. Crim. P. 32.2(c). In order to trigger the commencement of a third-party ancillary proceeding, the government must first publish notice of the forfeiture order and send notice to potential claimants. Fed. R. Crim. P. 32.2(b)(6)(A). The notice must describe the forfeited property, state the time when a petition contesting the forfeiture must be filed, and state the name and contact information for the government attorney to be served with the petition. Fed. R. Crim. P. 32.2(b)(6)(B).

A petition must set forth all legal bases for interests claimed in property subject to forfeiture. 21 U.S.C. § 853(n)(3); see also United States v. BCCI Holdings (Lux.), S.A., 69 F. Supp. 36, 55 (D.D.C. 1999) (collecting cases in which petitions filed under Section 1963(l) were dismissed for failure to identify nature of interest claimed). All grounds for recovery must be set forth within the petition, and a claimant may not later amend the petition to assert additional grounds for relief. See, e.g., United States v. Soreide, 461 F.3d 1351, 1355 (11th Cir. 2006) (holding that claims not asserted in petition were statutorily time-barred); United States v. Strube, 58 F. Supp. 2d 576, 585 (M.D. Pa. 1999) (rejecting third-party claims as untimely because they were not raised in petition but first asserted in response to government's motion to dismiss). A petition will therefore succeed or fail in its original and un-amended form.

The ancillary proceeding closely resembles a civil action and, as such, is generally governed by the same procedures as those set forth in the Federal Rules of Civil Procedure. See, e.g., Pacheco v. United States, 393 F.3d 348, 352 (2d Cir. 2004) (commenting that civil procedures aid efficient resolution of claims in ancillary proceeding). In this regard, the Court may entertain motions to dismiss a petition for lack of standing, for failure to state a claim, or for any other lawful reason. Fed. R. Crim. P. 32.2(c)(1)(A). In the event that a claim survives a motion to dismiss and, after conclusion of a period for the parties to conduct any discovery that is necessary or desirable to resolve factual issues, a party may move for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. Fed. R. Crim. P. 32.2(c)(1)(B).

In order to advance a claim in an ancillary proceeding, a third-party claimant must first establish a "legal interest" in a particular asset identified in an order of forfeiture, within the meaning of 21 U.S.C. § 853(n)(2). United States v. Ribadeniera, 105 F.3d 833, 834-35 (2d Cir. 1997); see also United States v. Timley, 507 F.3d 1125, 1129-30 (8th Cir. 2007) ("[A] party seeking to challenge the government's forfeiture of money or property used in violation of federal law must first demonstrate a legal interest in the seized item sufficient to satisfy the court of its standing to contest the forfeiture.") (citation omitted); United States v. Salti, 579 F.3d 656, 667 n. 11 (6th Cir. 2009) (holding that standing must be supported in same way as any other matter on which claimant bears burden of proof).

Only after a claimant makes a threshold showing of standing under Section 853(n)(2) may a court reach the merits of a claim, at which point the court must determine whether the claimant has met his burden of showing that his legal interest is a "superior interest" as compared to the government's interest at the time of the acts giving rise to forfeiture. Timley, 507 F.3d at 1130, n. 2 (distinguishing between "legal interest" required for claimant to establish standing under Section 853(n)(2), and "superior legal interest" required for claimant to ultimately prevail on merits under Section 853(n)(6)); Pacheco, 393 F.3d at 351 ("burden [falls] ultimately on the petitioner to prove her claim by a preponderance of the evidence"); United States v. Porchay, 533 F.3d 704, 709 (8th Cir. 2008) ("To prevail in a § 853(n) claim, [claimant] had to demonstrate by a preponderance of the evidence that she had a superior right, title, or interest in the seized property . . . ."); United States v. Nava, 404 F.3d 1119, 1125 (9th Cir. 2005) ("[T]he petitioner bears the burden of proving his right, title, or interest under Section 853(n)(6).").

In order to show a superior interest, a claimant must either demonstrate under Section 853(n)(6)(A) that he had priority of ownership over the forfeited property at the time of the offense, or must demonstrate under Section 853(n)(6)(B) that he subsequently acquired the property as a bona fide purchaser for value without cause to believe the property was subject to forfeiture. Ribadeniera, 105 F.3d at 834-35. In addition, under the relation back doctrine, the government's exclusive interest in forfeited property "vests in the United States upon the commission of the act giving rise to forfeiture . . . ." 21 U.S.C. § 853(c); Nava, 404 F.3d at 1124 ("The title to forfeited property vests in the United States at the time the defendant commits the unlawful acts . . . .").

In sum, the ancillary proceeding is essentially a quiet title proceeding in which the Court must determine whether forfeited property actually belongs to the third party that has asserted a claim to it. See, e.g., United States v. McHan, 345 F.3d 262, 275-76 (4th Cir. 2003) (holding that petitioner in ancillary proceeding, which is akin to equitable quiet title proceeding, has no Seventh Amendment right to jury trial). If the forfeited property belongs to the third party, then the property must be stricken from the order of forfeiture; however, if the property does not belong to the third party, then the preliminary order of forfeiture becomes final and the United States becomes the exclusive titleholder to the property. See 21 U.S.C. §§ 853(n)(6) and (7); United States v. Puig, 419 F.3d 700, 703 (8th Cir. 2005) (holding that if no third party files a meritorious claim to assets included in order of forfeiture, then United States obtains clear title to property pursuant to 21 U.S.C. § 853(n)(7)).

III. Adjudication of the Korchevskys' Petitions Would Be Premature

As the statutory framework makes clear, the ancillary proceeding is not commenced until after the government publishes notice of a forfeiture order and sends notice to potential third-party claimants. Fed. R. Crim. P. 32.2(b)(6). In this case, the Korchevskys each filed their petitions before the government took any such steps, which are designed to ensure that all other potential claimants could properly assert an interest in the Subject Funds and the Subject Property. Accordingly, the ancillary hearing on Svetlana Korchvesky's petition should be adjourned until after such time as the government takes appropriate steps to commence the ancillary proceeding.

In multi-defendant cases like this one, the interests of justice are best served by conducting the ancillary proceeding after all defendants have been tried. See United States v. House, 2016 WL 4154847 (N.D. Cal. Aug. 5, 2016) (staying ancillary proceeding where petitioner was necessary witness in ancillary hearing and defendant in related criminal case in order to avoid infringement of defendant's Fifth Amendment right against self-incrimination); United States v. Becker, 2011 WL 836743, at *3-4 (D. Kan. Mar. 4, 2011) (stay of ancillary proceeding is appropriate where one defendant is convicted and co-defendant proceeds to trial in order to avoid Fifth Amendment problems). Requiring third-party petitioners to wait until after the conclusion of the criminal case to pursue claims in an ancillary proceeding has also been found to comport with due process requirements. United States v. Zorrilla-Echevarria, 671 F.3d 1, 11-12 (1st Cir. 2011) (rejecting third party's claim that delay in commencing ancillary proceeding violated right to due process).

Here, petitioner Vitaly Korchevsky is a criminal defendant awaiting trial, who has asserted a competing claim to some of the same property claimed by his wife, petitioner Svetlana Korchvesky. Since the government intends to seek discovery from the Korchevskys on the issue of ownership, which would implicate Vitaly Korchevksy's Fifth Amendment rights, moving forward with the ancillary proceeding at the present time would be impractical.

It is clear that the laws governing the ancillary proceeding contemplate an orderly process for the adjudication of third-party interests after resolution of the underlying criminal case. Indeed, pursuant to 21 U.S.C. § 853(k)(1), no party claiming an interest in property subject to forfeiture may intervene in a trial or appeal of a criminal case involving the forfeiture of such property. To allow the ancillary hearing to be conducted at this stage of the proceeding would be disruptive to the criminal trial process, and tantamount to the unlawful intervention by third-party claimants that is disfavored. See, e.g., United States v. Holy Land Found. for Relief & Dev., 493 F.3d 469, 476 n. 10, 477 (5th Cir. 2007) ("[I]t would be a significant burden on the Government to have to defend the forfeiture order from attack by a third party during the course of an ongoing criminal prosecution . . .").

Further, the Court's interests in effective administration of justice and fairness to all potential third parties are best served by addressing all claimants' potential interests in the Subject Property in one ancillary proceeding following the conclusion of Vitaly Korchevsky's criminal case. See 21 U.S.C. § 853(n)(4) ("The court may consolidate the hearing on the petition with a hearing on any other petition . . . .").

Moreover, Section 853 contemplates finality following the conclusion of the ancillary proceeding. See 21 U.S.C. 853(n)(7). ("Following the court's disposition of all petitions filed in the ancillary proceeding . . . , the United States shall have clear title to property that is the subject of the order of forfeiture." See 21 U.S.C. 853(n)(7)). If the Court proceeded with the ancillary proceeding on Svetlana Korchevsky's petition at this time ahead of all other potential claimants, there would be no finality to the proceedings since the ownership rights of other potential claimants would have yet to be adjudicated. Adjudicating all of the claims in one ancillary proceeding would be more efficient, conserve judicial resources and avoid duplication of testimony and evidence. Therefore, the interests of judicial efficiency and fairness to all third parties lean heavily in favor of adjournment of the ancillary proceeding until after the conclusion of Vitaly Korchevsky's criminal case.

IV. The Petition Filed by Svetlana Korchevsky Should Be Dismissed

Should the Court be inclined to proceed with the ancillary proceeding on Svetlana Korchevsky's claim ahead of all other potential claimants, the government respectfully requests that the parties be directed to confer and submit a briefing schedule for the government's anticipated motion to dismiss her petition, including on the grounds set forth below.

A. Legal Standard

In the context of a criminal forfeiture ancillary proceeding, a motion to dismiss a third-party petition pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure may be granted if it appears that the claimant can prove no facts that would entitle the claimant to relief. United States v. BCCI Holdings (Lux.), S.A., 980 F. Supp. 16, 20 (D.D.C. 1997) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). The Court must accept well-pleaded facts as true and construe the complaint liberally, granting a claimant the benefit of any reasonable inferences that can be derived from the facts alleged. Id. (citing Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)). The Court is not required, however, to accept inferences unsupported by the facts alleged or legal conclusions that are pleaded as factual allegations. Id. (citation omitted).

No hearing is necessary where the court can dismiss the claim on the pleadings for lack of standing, failure to state a claim, or some other lawful reason. See, Rule 32.2(c)(1)(A); United States v. Chu, 2012 WL 6082451 (S.D.N.Y. Dec. 4, 2012) (granting Rule 32.2(c)(1)(A) motion to dismiss for lack of standing where claim, on its face, stated that claimant gave the forfeited property to defendant as a gift).

B. Svetlana Korchevsky Lacks Standing To Assert a Claim

Petitioner Svetlana Korchevsky asserts that she is a titled owner, or titled owner of the entity that owns, the Subject Funds and four parcels of real property listed in the preliminary orders of forfeiture entered on September 12, 2016 and October 3, 2016 (the "POFs"). Petitioner further claims that she has "an interest" in two parcels of real property listed in the POFs. For the reasons set forth below, the Petitioner lacks standing to assert a legal interest in the claimed property under 21 U.S.C. § 853(n)(2).

A third-party claimant's petition must assert the basis for the legal interest and must state the time and circumstances of the claimant's acquisition of an interest in the property. See, United States v. Church & Dwight Company, 510 Fed. Appx. 55 (2d Cir. 2013) (third-party petition must provide "enough facts to state a claim to relief that is plausible on its face," quoting Bell Atlantic Corp. v. Twombly); United States v. Molina-Sanchez, 2013 WL 4083271 (W.D.N.C. Aug. 13, 2013) (claim by defendant's wife asserting only that she was "owner" of property forfeited because it was purchased with drug money did not comply with § 853(n)(3) because it failed to assert a source for the money used to purchase the property); United States v. Edwards, 2011 WL 2006820, *4 (N.D. Ga. Apr. 18, 2011) (claim stating only that defendant's wife acquired the property "in good faith through her marriage" did not meet the statutory standard).

Further, a petitioner's bald assertion that the property is titled in her name is not sufficient for filing a claim under § 853(n). "Failing to look beyond bare legal title or whether the petitioner has a property interest under state law would foster manipulation of ownership by persons engaged in criminal activity." United States v. Morgan, 224 F.3d 339, 343 (4th Cir. 2000) (citing United States v. Liscum Drive, Dayton Montgomery County, 866 F.2d 213, 217 (6th Cir.1989)). Accordingly, the Court must ask whether the petitioner is a "nominee," meaning "existing in name only, not in reality." Id. at 434 & n. 4 (citations omitted). See also, United States v. Weiss, 467 F.3d 1300, 1303 n. 1 (11th Cir.2006). To determine whether the petitioner is a true owner or a nominee, the Court must look to whether the petitioner had actual dominion and control over the property at issue. See In re Bryson, 406 F.3d 284, 291 (4th Cir.2005) (finding no dominion and control where third-party petitioner in whose name the property was titled did not pay for the property and did not pay taxes on the property); Morgan, 224 F.3d at 343 (finding no dominion or control where a third-party petitioner did not control the money in the account in question and did not have knowledge of how her husband managed and used the account); United States v. A Single Family Residence, 803 F.2d 625, 630 (11th Cir.1986) (noting in the civil forfeiture context, "possession of bare legal title by one who does not exercise dominion and control over the property is insufficient even to establish standing to challenge a forfeiture").

Here, although listed as a titled owner of certain of the property at issue, petitioner Svetlana Korchevsky has failed to allege facts showing that she is more than a "nominee," in that she had dominion and control over such property. In addition, petitioner Svetlana Korchevsky has not set forth the circumstances of her acquisition of an interest in the property claimed, nor alleged the source of the funds used to acquire such property.

C. Svetlana Korchevsky Cannot Demonstrate Priority of Ownership Under Section 853(n)(6)(A)

Even if the Court were to find that petitioner Svetlana Korchevsky had standing to assert a claim, her claim would still fail on the merits because she cannot demonstrate priority of ownership at the time of the charged offenses, pursuant to 21 U.S.C. § 853(n)(6)(A).

"Under the relation-back doctrine, title to the forfeited property vests in the United States at the time of the defendant's criminal act." Timley, at 1130. Therefore, a third-party can never establish a pre-existing interest under Section 853(n)(6)(A) in property, such as the property at issue here, that is the proceeds of a crime, or traceable to the proceeds of a crime. See, e.g., United States v. Hooper, 229 F.3d 818, 821-22 (9th Cir. 2000) (holding that Section 853(n)(6)(A) can never be used to successfully challenge forfeiture of criminal proceeds, which by their very nature do not exist before commission of offense); United States v. Dupree, 919 F. Supp.2d 254, 269 (E.D.N.Y. 2013) (following Hooper; jury having found the forfeited property was the proceeds of the offense, claimant could not possibly have a claim under § 853(n)(6)(A)); United States v. Hailey, 924 F. Supp.2d 648, 657 n. 14 (D. Md. 2013) (following Hooper; defendant's wife could not assert a claim to luxury items purchased with fraud proceeds because Government's interest vested before she acquired any interest of her own); United States v. Brinton, 880 F. Supp. 2d 1158, 1160-61 (D. Utah 2012) (following Hooper; third party cannot assert a pre-existing interest in residence that defendant purchased with the proceeds of his crime); United States v. Martinez, 228 F.3d 587, 590 (5th Cir. 2000) (spouse cannot assert marital interest under § 853(n)(6)(A) in property acquired with criminal proceeds because the relation back doctrine bars the wife from ever acquiring an interest in criminal proceeds); United States v. Eldick, 223 Fed. Appx. 837, 840 (11th Cir. 2007) (following Hooper, and holding that if forfeited property is traceable to proceeds of crime, government's interest under relation back doctrine will always be superior to that of third-party asserting interest under Section 853(n)(6)(A)); United States v. Rothstein, 2010 WL 4064809, *3 (S.D. Fla. Oct. 14, 2010) (following Eldick; a third party cannot assert a claim to fraud proceeds under § 853(n)(6)(A), even if they are found in the third party's bank account, because no one can have a pre¬existing interest in the proceeds of the crime giving rise to the forfeiture; that the third party's interest was superior to the defendant's interest is not sufficient); United States v. Warshak, No. 09-3321, 2011 WL 2450991, at *2 (6th Cir. Mar. 30, 2011) (following Hooper, and holding that defendant's wife could not establish pre-existing interest under Section 853(n)(6)(A) in proceeds of defendant's crime because government's interest vested as soon as crime occurred).

In the instant case, the property at issue constitutes proceeds, or property traceable to the proceeds, of the wire fraud conspiracy of which Garkusha and/or Momotok were convicted and Vitaly Korchevsky stands charged. As a petitioner can never show priority of ownership over crime proceeds, Svetlana Korchevksy therefore cannot show that she has a superior interest in any of the property at issue.

D. Svetlana Korchevsky Is Not a Bona Fide Purchase For Value

Under 21 U.S.C. § 853(n)(6)(B), a petitioner must show that she is a bona fide purchaser for value of the right, title, or interest in the property at issue and was, at the time of purchase, reasonably without cause to believe that the property was subject to forfeiture.

Petitioner Svetlana Korchevksy will be unable to meet the requirements of Section 853(n)(6)(B) because she has not alleged in her petition that she has given anything of "value" in exchange for any "interest" in the property at issue. Neither her bald assertion that she "contributed to the acquisition of property financially," without further explanation, nor her claim that she provided "sweat equity as a homemaker" satisfy the requirement that she has given anything of value. United States v. Galemmo, 2015 WL 4450669 (S.D. Ohio, July 20, 2015) (wife who received valuable partnership shares from her husband without paying any consideration could not be a bona fide purchaser); United States v. Derochemont, 2011 WL 6319293, *3 (M.D. Fla. Dec. 15, 2011) (defendant's wife who acquired interest in residence when defendant bought it with his own money, and without contributing any funds of her own, was not a bona fide purchaser for value).

V. Conclusion

For the reasons set forth above, the government respectfully requests that the ancillary hearing presently scheduled for June 19, 2017 be adjourned until at least thirty days after the disposition of the criminal case against Vitaly Korchevsky. In the alternative, the government respectfully requests that the parties be directed to confer and submit to the Court a proposed briefing schedule for a motion by the government seeking dismissal of the Korchevskys' petitions.

Thank you for your Honor's consideration of this submission.

Respectfully submitted,

BRIDGET M. ROHDE
Acting United States Attorney

By: /s *Tanisha Payne*
Tanisha R. Payne
Assistant U.S. Attorney
(718) 254-6358

cc: Counsel of Record (by ECF)